

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Verizon Long Distance |) | IC No. 04-S87194 |
| |) | |
| Complaint Regarding |) | |
| Unauthorized Change of |) | |
| Subscriber's Telecommunications Carrier |) | |

ORDER ON RECONSIDERATION

Adopted: March 27, 2007

Released: March 28, 2007

By the Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we deny a Petition for Reconsideration filed by Verizon and Verizon Long Distance (collectively, Verizon) asking us to reverse a finding that Verizon changed Complainant's telecommunications service provider in violation of the Commission's rules by failing to obtain proper authorization and verification.¹ On reconsideration, we affirm that Verizon's actions violated the Commission's carrier change rules.²

I. BACKGROUND

2. In December 1998, the Commission adopted rules prohibiting the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.³ The rules were designed to take the profit out of slamming.⁴ The Commission applied the rules to all wireline carriers,⁵ and modified its existing requirements for the authorization and verification of preferred carrier changes.⁶

3. The rules require that a submitting carrier receive individual subscriber consent before a

¹ See Petition for Reconsideration of Verizon and Verizon Long Distance (filed May 31, 2005) (*Petition*), seeking reconsideration of *Verizon Long Distance*, 20 FCC Rcd 8431 (2005) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB).

² See 47 C.F.R. §§ 64.1100 – 64.1190. One other complaint was considered in the *Division Order*. Verizon is not seeking reconsideration of the decision with respect to that complaint, IC No. 04-S88264. See *Petition* at 1, n.1.

³ See *id.*; see also 47 U.S.C. § 258(a).

⁴ See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1512, para. 4 (1998) (*Section 258 Order*). See also *id.* at 1518-19, para. 13.

⁵ See *id.* at 1560, para. 85. CMRS providers were exempted from the verification requirements. See *id.*

⁶ See *id.* at 1549, para. 66.

carrier change may occur.⁷ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁸

4. The Commission also adopted liability rules for carriers that engage in slamming.⁹ If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.¹⁰ Where the subscriber has paid charges to the unauthorized carrier, the unauthorized carrier must pay 150% of those charges to the authorized carrier, and the authorized carrier must refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.¹¹

5. The Commission received a complaint on May 4, 2004, alleging that Complainant's telecommunications service provider had been changed from MCI to Verizon without Complainant's authorization.¹² Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹³ the Division notified Verizon of the complaint.¹⁴ In its response, Verizon stated that authorization was received and confirmed through third party verification (TPV).¹⁵ The Division found that Verizon's TPV did not contain oral authorization as required by the Commission rules¹⁶ and, therefore, Verizon's actions resulted in an unauthorized change in Complainant's telecommunications service provider.¹⁷ Verizon seeks reconsideration of the *Division Order*.

⁷ See 47 C.F.R. § 64.1120; see also 47 U.S.C. § 258(a) (barring carriers from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures).

⁸ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁹ See 47 C.F.R. §§ 64.1140, 64.1160-70.

¹⁰ See 47 C.F.R. §§ 64.1140, 64.1160 (any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change).

¹¹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹² Informal Complaint No. IC 04-S87194, filed May 4, 2004.

¹³ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹⁴ See Notice of Informal Complaint No. IC 04-S87194 to Verizon from the Deputy Chief, Division, CGB, dated May 27, 2004.

¹⁵ Verizon's Response to Informal Complaint No. IC 04-S87024, received October 7, 2004 (*Verizon Response*).

¹⁶ See 47 C.F.R. § 64.1120(c).

¹⁷ See *Division Order*, 20 FCC Rcd 8431 (2005); see also 47 C.F.R. § 64.1150(d). Verizon's TPV required the subscriber to provide authorization by pressing digits on the subscriber's telephone in response to verification questions. Verizon's TPV submitted with *Verizon Response*.

II. DISCUSSION

6. Based on the record before us, we affirm the *Division Order* and deny Verizon's *Petition*. In the *Petition*, Verizon contends the *Division Order* was incorrect because the TPV included oral authorization of Complainant's intent to switch his local toll provider and his long distance provider.¹⁸ Verizon claims that its automated TPV system complies with the Commission's rules.¹⁹ According to Verizon, the Commission's rules do not require that an automated TPV system be wholly or exclusively oral but, rather, only that verification systems conform with the requirements set forth in Sections 64.1120(c)(3)(ii) through (c)(3)(iv) of the Commission's rules.²⁰ Verizon thus maintains that the plain terms of these rules do not require that automated third party verification systems record oral responses to the entire verification process. According to Verizon, the reference to "oral authorization" appears in Section 64.1120(c)(3) and not in subsection 64.1120(c)(3)(i), which deals with automated TPV systems.²¹ Verizon concludes that its TPV system at issue included oral authorization of Complainant's "intent to switch carriers by recording his name and month and date of birth."²²

7. We disagree. To accept Verizon's arguments would be to ignore the clear "oral authorization" requirement of Section 64.1120(c), which provides:

No telecommunications carrier shall submit a preferred carrier change order unless and until the order has been confirmed in accordance with one of the following procedures: ... (3) An appropriately qualified independent third party has obtained, in accordance with the procedures set forth in paragraphs (c)(3)(i) through (c)(3)(iv) of this section, the subscriber's *oral authorization* to submit the preferred carrier change order that confirms and includes appropriate verification data (e.g., the subscriber's date of birth or social security number).²³ (*emphasis added*)

8. Verizon's arguments are inconsistent with a clear, unambiguous reading of the rules. Simply put, we conclude that a TPV recording must comport with the requirement that the subscriber's oral authorization for a carrier change be obtained. In the *Third Report and Order*, the Commission permitted the use of automated systems, but did not exempt automated systems from the oral authorization requirement.²⁴ Therefore, we affirm that Verizon's failure to obtain an oral authorization

¹⁸ See *Petition* at 2. Verizon notes that, while the *Division Order* refers to the alleged slamming of Complainant's regional toll provider, the complaint itself alleges the slamming of Complainant's long distance provider. However, the *Petition* discusses the TPV that was performed for both services. See *id.* at 2, n.3.

¹⁹ See *Petition* at 2.

²⁰ Verizon contends that the Commission's own regulations specifically provide that "[a]utomated third party verification systems and three-way conference calls *may be used* for verification purposes *so long as the requirements of paragraphs (c)(3)(ii) through (c)(3)(iv) of this section are satisfied.*" *Petition* at 2-3. (*emphasis added* by Verizon.)

²¹ *Petition* at 3. Verizon also alleges that its reading is consistent with the *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, *Third Report and Order and Second Order on Reconsideration*, 15 FCC Rcd 15996 (2000) (*Third Report and Order*), referencing paragraphs 43 and 44 of that order. See *Third Report and Order*, 15 FCC Rcd at 16017-18.

²² *Petition* at 5. Verizon attached a redacted transcript of the automated recording to the *Petition*.

²³ 47 C.F.R. § 64.1120(c).

²⁴ Specifically, the Commission discussed the operation of automated systems and observed that, after the carrier's sales representative sets up a three-way call among the subscriber, the carrier, and the automated verification

via its automated system resulted in an unauthorized change in Complainant's telecommunications service provider. Accordingly, we deny Verizon's *Petition*.²⁵

III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361, 1.106 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.106, 1.719, the Petition for Reconsideration filed by Verizon on May 31, 2005, IS DENIED.

10. IT IS FURTHER ORDERED that this Order is effective UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief
Consumer & Governmental Affairs Bureau

recording system, the automated system plays recorded questions and records the subscriber's answers to those questions. *Third Report and Order*, 15 FCC Rcd at 16017, n.125.

²⁵ We note that, in an earlier proceeding, Verizon filed, and CGB denied, a substantially identical petition for reconsideration regarding the same issues present in this proceeding. See Petition for Reconsideration of Verizon Long Distance (filed Feb. 25, 2005), seeking reconsideration of the Division's decision in *Verizon Long Distance*, 20 FCC Rcd 1458 (2005). See *Verizon Long Distance*, 22 FCC Rcd 1554 (2007).